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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re: Patent Application of : Group Art Unit 1644
Jürgen Eck et al. :
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Appln. No: 09/347,064 : Examiner: Gerald Ewoldt, Ph.D.
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Filed: July 2, 1999 : Attorney Docket
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Title: Nucleic Acids Encoding Fusion Proteins : No. 9282-5
Based on Ribosome-Inactivating Proteins of : (209282.0005)
the Mistletoe *Viscum Album* : (B 3521 US)

gmb
8/7/01

FIRST PRELIMINARY AMENDMENT

This Preliminary Amendment is submitted together with a Request for a Continued Prosecution Application, which are timely filed in view of the simultaneously filed Petition for a Three-Month Extension of Time, which extends the period available for responding to the Office Action dated January 26, 2001 (Paper No. 12) through and including July 26, 2001.

Prior to calculation of the filing fee due, kindly amend the application as follows.

In the Claims:

✓ ✓ ✓ ✓ ✓

Please cancel claims 28, 30, 31, and 38-46 without prejudice to including the subject matter of these claims in one or more additional patent applications.

REMARKS

Claims 1-27, 29, and 32-37 are pending in the present application. Claims 28, 30, 31, and 38-46 have been canceled solely for the purpose of reducing the initial filing fee due. Because all of the pending claims were elected in response to the Restriction Requirement dated December 23, 1999 (Paper No. 5), the Applicants believe that no further restriction of the claims is warranted. The Applicants also understand that the claims will be examined in view of the species elected in response to the Restriction Requirement.

Submitted herewith is a Claim of Foreign Priority, including a certified copy of the priority document and a certified translation thereof. The Applicants understand that submission of these documents perfects the Applicants' claim to the priority date of January 2, 1997. For this reason, the Applicants respectfully contend that the document cited by the Examiner as EP 0751221A1 cannot properly be cited as prior art, since the publication date of that reference is also January 2, 1997.

Second Preliminary Amendment

Per the Examiner's suggestion, this First Preliminary Amendment and the accompanying Request for a Continuing Prosecution Application are being submitted in order to maintain pendency of the application and to permit the Examiner to arrange his schedule sufficiently to afford the Applicants an opportunity to conduct a telephone interview with the Examiner prior to submitting a Second Preliminary Amendment. The Second Preliminary Amendment will include substantive responses to the issues raised by the Examiner in the Office Action dated January 26, 2001 (Paper No. 12). In the event the Second Preliminary Amendment has not been matched with the file at the time the Examiner is ready to take up the file for action on the merits, the Examiner is requested to contact the Applicants' undersigned representative so that a copy can be provided to the Examiner prior to issuance of the next action on the merits.

Respectfully submitted,

Jürgen Eck et al.

26 July 2001
(Date)

By:

GARY D. COLBY, Ph.D., J.D.

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